

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HARMONY GOLD U.S.A., INC.,

Plaintiff,

v.

HAREBRAINED SCHEMES LLC,
HAREBRAINED HOLDINGS, INC.,
JORDAN WEISMAN, PIRANHA GAMES
INC., INMEDIARES PRODUCTIONS,
LLC, and DOES 1-10

Defendants.

CASE NO. 2:17-cv-00327-TSZ

**DECLARATION OF ATSUSHI
NOGUCHI,**

DECLARATION OF ATSUSHI NOGUCHI,
(Case No. 2:17-cv-00327-TSZ) - 1

LAW OFFICES
CALFO EAKES & OSTROVSKY PLLC
1301 SECOND AVENUE, SUITE 2800
SEATTLE, WASHINGTON 98101
TEL (206) 407-2200 FAX (206) 407-2224

1 I, Atsushi Noguchi, declare as follows:

2 1. I am currently, as Managing Director, entrusted with the business management of
3 Tatsunoko Production Co., Ltd. ("Tatsunoko") by its shareholders. I am over eighteen years of
4 age, and competent to testify herein. The facts set forth below are based on my personal
5 knowledge, including knowledge gained through my review of and familiarity with the files and
6 documents related to Tatsunoko's and Harmony Gold's more than thirty-year relationship. If
7 called as a witness, I could and would competently and truthfully testify to these matters.

8 2. I have worked at Tatsunoko since March 1, 2009, and in my role as Managing
9 Director, I have gained extensive knowledge of Tatsunoko's creation of and rights to "Macross."
10 I also have gained extensive knowledge regarding Tatsunoko's long history with its exclusive
11 licensee of the "Macross" series, Harmony Gold. I am thus familiar with the parties' license
12 agreements and various amendments.

13 3. It is my understanding that in or around 1982, Tatsunoko, along with two other
14 Japan-based companies—Big West, Inc. ("Big West") and Studio Nue Co. ("Studio Nue"),
15 created an animated series, "Macross," that ran on Japanese television in the early 1980s.

16 4. It is my understanding that in 1982, by agreement, Tatsunoko, Big West, and
17 Studio Nue determined each party's rights in and to "Macross," both in Japan and internationally
18 (the "1982 Big West Agreement"). Pursuant to the 1982 Big West Agreement, all international
19 rights to reproduce, display, distribute and merchandize the warrior robots and mecha depicted in
20 "Macross" (the "Characters"), were granted exclusively to Tatsunoko.

21 5. Pursuant to the rights granted to Tatsunoko under the 1982 Big West Agreement,
22 in 1984, Tatsunoko granted Harmony Gold an exclusive license to reproduce, distribute, display,
23 license, merchandize, or otherwise exploit "Macross," including the Characters, in the United
24 States (the "1984 Agreement").
25

1 6. It is my understanding that in 1991, Tatsunoko and Harmony Gold renewed the
2 1984 Agreement, which extended Harmony Gold's exclusive license to "Macross" through
3 March 14, 2001 (the "1991 Agreement"). The 1991 Agreement used identical language as the
4 1984 Agreement regarding the grant of rights to Harmony Gold. Pursuant to a series of
5 amendments, Harmony Gold has retained its exclusive license in and to the Characters (other
6 than the derivative works right) ever since, and Harmony Gold's license is currently valid
7 through March 14, 2021.

8 7. It is my understanding that beginning in the late 1990s, Big West and Studio Nue
9 challenged Tatsunoko's rights in and to "Macross" in Japan, and in the early 2000s, Tatsunoko
10 and Big West/Studio Nue were involved in several litigations in Japan in order to determine—as
11 between these three parties—who owned what rights in and to "Macross" in Japan.

12 8. In the Japanese litigations, the Japanese courts confirmed that Tatsunoko was the
13 exclusive owner of the copyright to the animated television series "Macross," including the
14 storyline of "Macross." However, the Japanese courts found that Big West/Studio Nue owned
15 the copyright to the original drawings of the 41 animated Characters in "Macross," thus
16 restricting Tatsunoko's (and therefore Harmony Gold's) right to make future derivative works
17 using the original animated character designs.

18 9. The decisions addressed the parties' rights in Japan; however, they did not
19 address the international exploitation of "Macross," including the Characters. Instead,
20 Tatsunoko and Big West/Studio Nue separately agreed that Tatsunoko's status as the exclusive
21 licensor of the international rights in and to "Macross," including the Characters, shall be
22 maintained even after the Japanese decisions. The agreement between the parties, which was
23 entered after the Japanese court decisions, remains effective and valid even now.

1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.

3 Signed this 20th day of March, 2018, at Tokyo, Japan.

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5 By: Atsushi Noguchi
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DECLARATION OF ATSUSHI NOGUCHI,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 9, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants.

DATED this 9th day of April, 2018.

s/ Mary J. Klemz

Mary J. Klemz